

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

VIRAL KOTHARI, Individually and on behalf
of all others similarly situated,

Plaintiff,

v.

HARBOR DIVERSIFIED, INC., CHRISTINE
R. DEISTER, and LIAM MACKAY,

Defendants.

Case No:

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

Plaintiff Viral Kothari (“Plaintiff”), individually and on behalf of all other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, among other things, the investigation conducted by and through his attorneys, which included, among other things, a review of the Defendants’ public documents, public filings, wire and press releases published by and regarding Harbor Diversified, Inc. (“Harbor Diversified” or the “Company”), and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a class action on behalf of persons or entities who purchased or otherwise acquired publicly traded Harbor Diversified securities between May 10, 2022 and March 29, 2024 inclusive (the “Class Period”). Plaintiff seeks to recover compensable damages caused by Defendant’s violations of the federal securities laws under the Securities Exchange Act of 1934 (the “Exchange Act”)

JURISDICTION AND VENUE

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, and Section 27 of the Exchange Act (15 U.S.C. §78aa).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as the alleged misstatements entered and the subsequent damages took place in this judicial district.

5. In connection with the acts, conduct and other wrongs alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

6. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein, purchased Harbor Diversified securities during the Class Period and was economically damaged thereby.

7. Defendant Harbor Diversified describes itself as “a non-operating holding company that is the parent of a consolidated group of subsidiaries, including AWAC Aviation, Inc. (“AWAC”), which is the sole member of Air Wisconsin Airlines LLC (“Air Wisconsin”), a regional air carrier. Harbor is also the direct parent of three other subsidiaries: (1) Lotus Aviation Leasing, LLC (“Lotus”), which leases flight equipment to Air Wisconsin, (2) Air Wisconsin Funding LLC (“AWF”), which provides flight equipment financing to Air Wisconsin, and

(3) Harbor Therapeutics, Inc. (“Therapeutics”), which is a non-operating entity with no material assets.”

8. Harbor Diversified is incorporated in Delaware and its head office is located at W6390 Challenger Drive, Suite 203, Appleton, Wisconsin 54914-9120. Harbor Diversified’s common stock trades on the OTC Market (“OTC”) under the ticker symbol “HRBR”.

9. Defendant Christine R. Deister (“Deister”) served as the Company’s Chief Executive Officer (“CEO”) throughout the Class Period.

10. Defendant Liam Mackay (“Mackay”) served as the Company’s Chief Financial Officer (“CFO”) throughout the Class Period.

11. Defendants Deister and Mackay are collectively referred to herein as the “Individual Defendants.”

12. Each of the Individual Defendants:

- (a) directly participated in the management of the Company;
- (b) was directly involved in the day-to-day operations of the Company at the highest levels;
- (c) was privy to confidential proprietary information concerning the Company and its business and operations;
- (d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;
- (e) was directly or indirectly involved in the oversight or implementation of the Company’s internal controls;

- (f) was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company; and/or
- (g) approved or ratified these statements in violation of the federal securities laws.

13. Harbor Diversified is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency because all of the wrongful acts complained of herein were carried out within the scope of their employment.

14. The scienter of the Individual Defendants and other employees and agents of the Company is similarly imputed to the Company under *respondeat superior* and agency principles.

15. Harbor Diversified and the Individual Defendants are collectively referred to herein as “Defendants.”

SUBSTANTIVE ALLEGATIONS

Materially False and Misleading Statements Issued During the Class Period

16. On May 9, 2022, after market hours, Harbor Diversified filed with the SEC its quarterly report on Form 10-Q for the period ended March 31, 2022 (the “1Q22 Report”). Attached to the 1Q22 Report were certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Deister and Mackay attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

17. The 1Q22 Report contained the following statement about the Company’s internal controls:

As required by Rule 15d-15(b) under the Exchange Act, our management, including our principal executive officer, principal financial officer and principal accounting officer,

carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 15d-15(e) under the Exchange Act) as of March 31, 2022, the last day of the period covered by this Quarterly Report. *Based on this evaluation, our management, including our principal executive officer, principal financial officer and principal accounting officer, concluded that, as of March 31, 2022, our disclosure controls and procedures were effective at the reasonable assurance level.*

(Emphasis added).

18. The statement in ¶ 17 was materially false and misleading at the time it was made because the Company lacked adequate internal controls.

19. The 1Q22 Report contained the following graph, displaying the Company's revenues:

Harbor Diversified, Inc. and Subsidiaries		
Consolidated Statements of Operations (in thousands, except per share amounts)		
	Three Months Ended March 31,	
	2022	2021
	(unaudited)	
Operating Revenues		
Contract revenues	\$66,968	\$ 49,756
Contract services and other	7	18
Total Operating Revenues	<u>66,975</u>	<u>49,774</u>
Operating Expenses		
Payroll and related costs	26,601	22,751
Aircraft fuel and oil	51	13
Aircraft maintenance, materials and repairs	14,501	11,072
Aircraft rent	—	23
Other rents	1,613	922
Depreciation, amortization and obsolescence	6,644	6,500
Payroll Support Program	—	(27,914)
Purchased services and other	3,765	3,150
Total Operating Expenses	<u>53,175</u>	<u>16,517</u>
Income From Operations		
Other (Expense) Income		
Interest income	574	370
Interest expense	—	(362)
Loss on marketable securities	(2,423)	(57)
Other, net	210	—
Total Other (Expense) Income	<u>(1,639)</u>	<u>(49)</u>
Net Income Before Taxes	<u>12,161</u>	<u>33,208</u>
Income Tax Expense	<u>2,898</u>	<u>7,983</u>
Net Income	<u>\$ 9,263</u>	<u>\$ 25,225</u>
Preferred stock dividends	<u>198</u>	<u>198</u>
Net income available to common stockholders	<u>\$ 9,065</u>	<u>\$ 25,027</u>
Basic Earnings per share	<u>\$ 0.19</u>	<u>\$ 0.46</u>
Diluted Earnings per share	<u>\$ 0.14</u>	<u>\$ 0.35</u>
Weighted Average Common Shares:		
Basic	47,638	54,863
Diluted	64,535	71,662

20. The figures in ¶ 19 were materially misstated as a result of improper revenue

recognition.

21. On August 10, 2022, Harbor Diversified filed with the SEC its quarterly report on Form 10-Q for the period ended June 30, 2022 (the “2Q22 Report”). Attached to the 2Q22 Report were certifications pursuant to SOX signed by Defendants Deister and Mackay attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

22. The 2Q22 Report contained the following statement about the Company’s internal controls:

As required by Rule 15d-15(b) under the Exchange Act, our management, including our principal executive officer, principal financial officer and principal accounting officer, carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 15d-15(e) under the Exchange Act) as of June 30, 2022, the last day of the period covered by this Quarterly Report. ***Based on this evaluation, our management, including our principal executive officer, principal financial officer and principal accounting officer, concluded that, as of June 30, 2022, our disclosure controls and procedures were effective at the reasonable assurance level.***

(Emphasis added).

23. The statement in ¶ 22 was materially false and misleading at the time it was made because the Company lacked adequate internal controls.

24. The 2Q22 Report contained the following graph, displaying the Company’s revenues:

Harbor Diversified, Inc. and Subsidiaries

Consolidated Statements of Operations (in thousands, except per share amounts)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
	(unaudited)		(unaudited)	
Operating Revenues				
Contract revenues	\$77,923	\$ 52,845	\$144,891	\$102,601
Contract services and other	7	15	14	33
Total Operating Revenues	77,930	52,860	144,905	102,634
Operating Expenses				
Payroll and related costs	27,694	25,012	54,295	47,763
Aircraft fuel and oil	34	44	85	57
Aircraft maintenance, materials and repairs	16,336	12,540	30,837	23,612
Aircraft rent	—	44	—	67
Other rents	1,657	1,263	3,270	2,185
Depreciation, amortization and obsolescence	6,674	6,499	13,318	12,999
Payroll Support Program	—	(22,256)	—	(50,170)
Purchased services and other	3,514	3,110	7,279	6,260
Total Operating Expenses	55,909	26,256	109,084	42,773
Income From Operations	22,021	26,604	35,821	59,861
Other (Expense) Income				
Interest income	688	456	1,262	826
Interest expense	—	(327)	—	(689)
Gain (loss) on marketable securities	(3,602)	43	(6,025)	(14)
Gain on extinguishment of debt	—	228	—	228
Other, net	691	68	901	68
Total Other (Expense) Income	(2,223)	468	(3,862)	419
Net Income Before Taxes	19,798	27,072	31,959	60,280
Income Tax Expense	4,717	6,551	7,615	14,534
Net Income	\$15,081	\$ 20,521	\$ 24,344	\$ 45,746
Preferred stock dividends	198	198	396	396
Net Income available to common stockholders	\$14,883	\$ 20,323	\$ 23,948	\$ 45,350
Basic Earnings per share	\$ 0.32	\$ 0.37	\$ 0.51	\$ 0.83
Diluted Earnings per share	\$ 0.24	\$ 0.28	\$ 0.38	\$ 0.63
Weighted Average Common Shares:				
Basic	46,519	54,466	47,075	54,664
Diluted	63,019	71,455	63,773	71,613

See accompanying condensed notes to unaudited consolidated financial statements.

25. The figures in ¶ 24 were materially misstated as a result of improper revenue recognition.

26. On November 21, 2022, Harbor Diversified filed with the SEC its quarterly report on Form 10-Q for the period ended September 30, 2022 (the “3Q22 Report”). Attached to the 3Q22 Report were certifications pursuant to SOX signed by Defendants Deister and Mackay attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

27. The 3Q22 Report contained the following statement about the Company’s internal controls:

As required by Rule 15d-15(b) under the Exchange Act, our management, including our principal executive officer, principal financial officer and principal accounting officer, carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 15d-15(e) under the Exchange Act) as of September 30, 2022, the last day of the period covered by this Quarterly Report. ***Based on this evaluation, our management, including our principal executive officer, principal financial officer and principal accounting officer, concluded that, as of September 30, 2022, our disclosure controls and procedures were effective at the reasonable assurance level.***

(Emphasis added).

28. The statement in ¶ 27 was materially false and misleading at the time it was made because the Company lacked adequate internal controls.

29. The 3Q22 Report contained the following graph, displaying the Company's revenues:

Harbor Diversified, Inc. and Subsidiaries
Consolidated Statements of Operations (in thousands, except per share amounts)

	Three Months Ended September 30, 2022		Nine Months Ended September 30, 2022	
	2022	2021	2022	2021
	(unaudited)		(unaudited)	
Operating Revenues				
Contract revenues	\$68,389	\$ 71,866	\$213,280	\$174,467
Contract services and other	21	21	35	54
Total Operating Revenues	68,410	71,887	213,315	174,521
Operating Expenses				
Payroll and related costs	26,801	29,056	81,096	76,819
Aircraft fuel and oil	49	51	134	108
Aircraft maintenance, materials and repairs	17,494	13,877	48,331	37,489
Aircraft rent	—	—	—	67
Other rents	1,617	1,572	4,887	3,757
Depreciation, amortization and obsolescence	6,639	6,570	19,957	19,569
Payroll Support Program	—	(16,146)	—	(66,316)
Purchased services and other	3,310	3,684	10,589	9,944
Total Operating Expenses	55,910	38,664	164,994	81,437
Income From Operations				
Other (Expense) Income				
Interest income	840	611	2,102	1,437
Interest expense	—	(138)	—	(827)
Loss on marketable securities	(3,749)	(92)	(9,774)	(106)
Gain on extinguishment of debt	53	10,135	53	10,363
Other, net	885	566	1,786	634
Total Other (Expense) Income	(1,971)	11,082	(5,833)	11,501
Net Income Before Taxes	10,529	44,305	42,488	104,585
Income Tax Expense	2,507	8,026	10,122	22,560
Net Income	\$ 8,022	\$ 36,279	\$ 32,366	\$ 82,025
Preferred stock dividends	198	198	594	594
Net income available to common stockholders	\$ 7,824	\$ 36,081	\$ 31,772	\$ 81,431
Basic Earnings per share	\$ 0.17	\$ 0.67	\$ 0.68	\$ 1.49
Diluted Earnings per share	\$ 0.13	\$ 0.51	\$ 0.50	\$ 1.14
Weighted Average Common Shares:				
Basic	45,776	54,153	46,637	54,491
Diluted	62,276	71,155	63,268	71,468

See accompanying condensed notes to unaudited consolidated financial statements.

30. The figures in ¶ 29 were materially misstated as a result of improper revenue recognition.

31. On April 3, 2023, Harbor Diversified filed with the SEC its annual report on Form 10-K for the period ended December 31, 2022 (the “2022 Annual Report”). Attached to the 2022 Annual Report were certifications pursuant to SOX signed by Defendants Deister and Mackay attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

32. The 2022 Annual Report contained the following statement about the Company’s internal controls:

As required by Rule 15d-15(b) under the Exchange Act, our management, under the supervision and with the participation of our principal executive officer, our principal financial officer and our principal accounting officer, carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 15d-15(e) under the Exchange Act) as of December 31, 2022, the last day of the period covered by this Annual Report. *Based on this evaluation, our management, including our principal executive officer, our principal financial officer and our principal accounting officer, concluded that, as of December 31, 2022, our disclosure controls and procedures were effective at the reasonable assurance level.*

(Emphasis added).

33. The statement in ¶ 32 was materially false and misleading at the time it was made because the Company lacked adequate internal controls.

34. The 2022 Annual Report contained the following graph, displaying the Company's revenues:

Harbor Diversified, Inc. and Subsidiaries		
Consolidated Statements of Operations (in thousands, except share values)		
Year ended December 31,	2022	2021
Operating Revenues		
Contract revenues	\$280,737	\$247,519
Contract services and other	126	60
Total Operating Revenues	280,863	247,579
Operating Expenses		
Payroll and related costs	109,831	106,881
Aircraft fuel and oil	169	171
Aircraft maintenance, materials and repairs	67,096	56,145
Aircraft rent	—	67
Other rents	6,582	5,375
Depreciation, amortization and obsolescence	26,327	26,552
Purchased services and other	14,992	13,535
Payroll Support Program	—	(66,316)
Total Operating Expenses	224,997	142,410
Income From Operations	55,866	105,169
Other (Expense) Income		
Interest income	7,024	4,520
Interest expense	(3)	(847)
Loss on marketable securities	(8,826)	(1,158)
Gain on extinguishment of debt	53	10,363
Other, net	(11)	—
Total Other (Expense) Income	(1,763)	12,878
Net Income Before Taxes	54,103	118,047
Income Tax Expense	14,993	25,421
Net Income	\$ 39,110	\$ 92,626
Preferred stock dividends	\$ 792	\$ 792
Net income available to common stockholders	\$ 38,318	\$ 91,834
Basic earnings per share	\$ 0.83	\$ 1.69
Diluted earnings per share	\$ 0.61	\$ 1.29
Weighted average common shares:		
Basic	46,359	54,321
Diluted	62,957	71,249

See accompanying notes to consolidated financial statements.

35. The figures in ¶ 34 were materially misstated as a result of improper revenue recognition.

36. On May 15, 2023, Harbor Diversified filed with the SEC its quarterly report on Form 10-Q for the period ended March 31, 2023 (the “1Q23 Report”). Attached to the 1Q23 Report were certifications pursuant to SOX signed by Defendants Deister and Mackay attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

37. The 1Q23 Report contained the following statement about the Company’s internal controls:

As required by Rule 15d-15(b) under the Exchange Act, our management, including our principal executive officer, principal financial officer and principal accounting officer, carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 15d-15(e) under the Exchange Act) as of March 31, 2023, the last day of the period covered by this Quarterly Report. ***Based on this evaluation, our management, including our principal executive officer, principal financial officer and principal accounting officer, concluded that, as of March 31, 2023, our disclosure controls and procedures were effective at the reasonable assurance level.***

(Emphasis added).

38. The statement in ¶ 37 was materially false and misleading at the time it was made because the Company lacked adequate internal controls.

39. The 1Q23 Report contained the following graph, displaying the Company’s revenues:

Harbor Diversified, Inc. and Subsidiaries

Consolidated Statements of Operations (in thousands, except per share amounts)

	Three Months Ended March 31,	
	2023	2022
Operating Revenues		(unaudited)
Contract revenues	\$ 59,037	\$66,968
Contract services and other	95	7
Total Operating Revenues	<u>59,132</u>	<u>66,975</u>
Operating Expenses		
Payroll and related costs	29,768	26,601
Aircraft fuel and oil	102	51
Aircraft maintenance, materials and repairs	19,349	14,501
Other rents	1,594	1,613
Depreciation, amortization and obsolescence	6,357	6,644
Purchased services and other	4,442	3,765
Total Operating Expenses	<u>61,612</u>	<u>53,175</u>
(Loss) Income from Operations	<u>(2,480)</u>	<u>13,800</u>
Other Income (Expense)		
Interest income	1,366	784
Interest expense	(1)	—
Gain (Loss) on marketable securities	1,740	(2,423)
Other, net	(13)	—
Total Other Income (Expense)	<u>3,092</u>	<u>(1,639)</u>
Net Income Before Taxes	<u>612</u>	<u>12,161</u>
Income Tax (Benefit) Expense	<u>(270)</u>	<u>2,898</u>
Net Income	<u>\$ 882</u>	<u>\$ 9,263</u>
Preferred stock dividends	252	198
Net income available to common stockholders	\$ 630	\$ 9,065
Basic Earnings per share	<u>\$ 0.01</u>	<u>\$ 0.19</u>
Diluted Earnings per share	<u>\$ 0.01</u>	<u>\$ 0.14</u>
Weighted average common shares:		
Basic	44,980	47,638
Diluted	61,480	64,535

See accompanying condensed notes to unaudited consolidated financial statements.

40. The figures in ¶ 39 were materially misstated as a result of improper revenue recognition.

41. On August 14, 2023, Harbor Diversified filed with the SEC its quarterly report on Form 10-Q for the period ended June 30, 2023 (the “2Q23 Report”). Attached to the 2Q23 Report were certifications pursuant to SOX signed by Defendants Deister and Mackay attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

42. The 2Q23 Report contained the following statement about the Company’s internal controls:

As required by Rule 15d-15(b) under the Exchange Act, our management, including our principal executive officer, principal financial officer and principal accounting officer,

carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 15d-15(e) under the Exchange Act) as of June 30, 2023, the last day of the period covered by this Quarterly Report. ***Based on this evaluation, our management, including our principal executive officer, principal financial officer and principal accounting officer, concluded that, as of June 30, 2023, our disclosure controls and procedures were effective at the reasonable assurance level.***

(Emphasis added).

43. The statement in ¶ 42 was materially false and misleading at the time it was made because the Company lacked adequate internal controls.

44. The 2Q23 Report contained the following graph, displaying the Company's revenues:

Harbor Diversified, Inc. and Subsidiaries				
Condensed Consolidated Statements of Operations (in thousands, except per share amounts)				
	Three Months Ended June 30, <u>2023</u> (unaudited)		Six Months Ended June 30, <u>2023</u> (unaudited)	
Operating Revenues				
Contract revenues	\$ 50,970	\$77,923	\$110,007	\$144,891
Contract services and other	102	7	197	14
Total Operating Revenues	51,072	77,930	110,204	144,905
Operating Expenses				
Payroll and related costs	29,953	27,694	59,721	54,295
Aircraft fuel and oil	221	34	323	85
Aircraft maintenance, materials and repairs	17,869	16,336	37,218	30,837
Other rents	1,474	1,657	3,068	3,270
Depreciation, amortization and obsolescence	6,370	6,674	12,727	13,318
Purchased services, legal and other	7,532	3,514	11,974	7,279
Total Operating Expenses	63,419	55,909	125,031	109,084
(Loss) Income from Operations	(12,347)	22,021	(14,827)	35,821
Other Income (Expense)				
Interest income	1,429	1,382	2,795	2,166
Interest expense	(11)	—	(12)	—
(Loss) gain on marketable securities	(795)	(3,602)	945	(6,025)
Gain on extinguishment of debt	70	—	70	—
Other, net	(1)	(3)	(14)	(3)
Total Other Income (Expense)	692	(2,223)	3,784	(3,862)
Net (Loss) Income Before Taxes	(11,655)	19,798	(11,043)	31,959
Income Tax (Benefit) Expense	(2,486)	4,717	(2,756)	7,615
Net (Loss) Income	(9,169)	15,081	(8,287)	24,344
Preferred stock dividends	305	198	557	396
Net (loss) income available to common stockholders	\$ (9,474)	\$14,883	\$ (8,844)	\$ 23,948
Basic (Loss) Earnings per share	\$ (0.21)	\$ 0.32	\$ (0.20)	\$ 0.51
Diluted (Loss) Earnings per share	\$ (0.21)	\$ 0.24	\$ (0.20)	\$ 0.38
Weighted average common shares:				
Basic	44,277	46,519	44,626	47,075
Diluted	44,277	63,019	44,626	63,773

See accompanying condensed notes to unaudited condensed financial statements.

45. The figures in ¶ 44 were materially misstated as a result of improper revenue

recognition.

46. On November 14, 2023, Harbor Diversified filed with the SEC its quarterly report on Form 10-Q for the period ended September 30, 2023 (the “3Q23 Report”). Attached to the 3Q23 Report were certifications pursuant to SOX signed by Defendants Deister and Mackay attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

47. The 3Q23 Report contained the following statement about the Company’s internal controls:

As required by Rule 15d-15(b) under the Exchange Act, our management, including our principal executive officer, principal financial officer and principal accounting officer, carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 15d-15(e) under the Exchange Act) as of September 30, 2023, the last day of the period covered by this Quarterly Report. ***Based on this evaluation, our management, including our principal executive officer, principal financial officer and principal accounting officer, concluded that, as of September 30, 2023, our disclosure controls and procedures were effective at the reasonable assurance level.***

(Emphasis added).

48. The statement in ¶ 47 was materially false and misleading at the time it was made because the Company lacked adequate internal controls.

49. The 3Q23 Report contained the following graph, displaying the Company’s revenues:

Harbor Diversified, Inc. and Subsidiaries

Condensed Consolidated Statements of Operations (in thousands, except per share amounts)

	Three Months Ended September 30,		(unaudited)
	2023	2022	
Operating Revenues			
Contract revenues	\$ 49,958	\$ 68,389	\$
Contract services and other	98	21	—
Total Operating Revenues	50,056	68,410	—
Operating Expenses			
Payroll and related costs	29,444	26,801	—
Aircraft fuel and oil	115	49	—
Aircraft maintenance, materials and repairs	11,175	17,494	—
Other rents	1,459	1,617	—
Depreciation, amortization and obsolescence	6,398	6,639	—
Purchased services, legal and other	6,537	3,310	—
Total Operating Expenses	55,128	55,910	—
(Loss) Income from Operations	(5,072)	12,500	—
Other Income (Expense)			
Interest income	1,540	1,732	—
Interest expense	—	—	—
Loss on marketable securities	(955)	(3,749)	—
Gain on extinguishment of debt	—	53	—
Other, net	—	(7)	—
Total Other Income (Expense)	585	(1,971)	—
Net (Loss) Income Before Taxes	(4,487)	10,529	—
Income Tax (Benefit) Expense	(799)	2,507	—
Net (Loss) Income	(3,688)	8,022	—
Preferred stock dividends	358	198	—
Net (loss) income available to common stockholders	\$ (4,046)	\$ 7,824	\$
Basic (Loss) Earnings per share	\$ (0.09)	\$ 0.17	\$
Diluted (Loss) Earnings per share	\$ (0.09)	\$ 0.13	\$
Weighted average common shares:			
Basic	43,654	45,776	—
Diluted	43,654	62,276	—

50. The figures in ¶ 49 were materially misstated as a result of improper revenue recognition.

51. The statements contained in ¶¶ 17, 19, 22, 24, 27, 29, 32, 34, 37, 39, 42, 44, 47, and 49 were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company's business, operations, and prospects, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) Harbor Diversified's financial statements from May 9, 2022 to the present were misstated due to improper revenue recognition;

(2) Harbor Diversified lacked adequate internal controls; and (3) as a result, Defendants' statements about its business, operations, and prospects were materially false and misleading and/or lacked a reasonable basis at all times.

THE TRUTH BEGINS TO EMERGE

52. On March 29, 2024, Harbor Diversified filed with the SEC a current report on Form 8-K in which it announced that certain of its previously-issued financial statements would need to be restated as a result of improper revenue recognition (the "Restatement Announcement"). Further, Harbor Diversified disclosed a material weakness in its internal controls.

53. Specifically, the Restatement Announcement stated the following:

On March 26, 2024, the audit committee (the "Audit Committee") of the board of directors of Harbor Diversified, Inc. (the "Company") concluded, after considering the recommendations of management, that the Company's previously issued (i) *consolidated financial statements and related disclosures as of and for the year ended December 31, 2022 contained in the Company's Annual Report on Form 10-K*, (ii) *interim consolidated financial statements and related disclosures contained in the Quarterly Reports on Form 10-Q as of and for the first three quarters of the year ended December 31, 2022*, and (iii) *interim consolidated financial statements and related disclosures contained in the Quarterly Reports on Form 10-Q as of and for the first three quarters of the year ended December 31, 2023* (collectively, the "Non-Reliance Periods") should no longer be relied upon due to misstatements contained in such financial statements, and that such financial statements should be restated.

The Audit Committee's conclusion *was based on management's review of the accounting for certain revenue under the capacity purchase agreement (the "United Agreement") previously entered into between Air Wisconsin Airlines LLC ("Air Wisconsin"), a wholly owned subsidiary of the Company, and United Airlines, Inc. ("United")*. As discussed in greater detail below, *management determined that the decision to recognize all of the approximately \$52.3 million in revenue and interest income (the "Disputed Amounts") in the consolidated financial statements and related disclosures prepared for the Non-Reliance Periods relating to certain disputed amounts under the United Agreement was not consistent with Accounting Standards Codification Topic 606, Revenue from Contracts with Customers ("ASC 606")*. The Audit Committee discussed its conclusion and management's determination, and the other matters described in this Current Report on Form 8-K (this "Current Report"), with the Company's independent registered public accounting firm, Grant Thornton LLP ("Grant Thornton").

* * *

Accounting Analysis

Upon its receipt of the Arbitration Award, the Company commenced an analysis of the complex accounting treatment leading to the recognition of the Disputed Amounts in revenue and interest income in light of the unexpected outcome of the arbitration. Following extensive discussions between Company management and Grant Thornton, as well as consultation between management and additional accounting and legal advisors, the Company concluded that (i) *its prior determination as to the amount of the disputed revenue and interest income under the United Agreement was inconsistent with the guidance in ASC 606, resulting in an accounting error as that concept is defined in the accounting guidance*, and (ii) its financial statements for the Non-Reliance Periods should be restated. Although cumulative revenue for the Non-Reliance Periods will change by approximately \$52.3 million, this will be partially offset by changes to the provision for income taxes in 2022 and an income tax benefit in 2023 on the statements of operations included in the consolidated financial statements. In addition, the balance sheets included in the consolidated financial statements will change to remove the related receivables from United, as well as take into account the related changes to the income tax provision/benefit. The Company also expects to file amended tax returns and seek reimbursement of certain tax payments made based on the previously recognized revenue and interest income. As a result, the Company expects to record an income tax receivable related to the amended returns. *The Company continues to assess the scope of the expected adjustments to the consolidated financial statements.*

* * *

Controls and Procedures Assessment

Company management continues to assess its internal control over financial reporting and disclosure controls and procedures in light of its determination to restate the financial statements. *The Company will report a material weakness in internal control over financial reporting in its Annual Report on Form 10-K for the year ended December 31, 2023.* Because of the weakness, the Company's management concluded that it did not maintain effective internal control over financial reporting and disclosure controls and procedures for the Non-Reliance Periods. Company management, at the direction of the Audit Committee, continues to evaluate appropriate remediation actions.

(Emphasis added).

54. On this news, the price of Harbor Diversified stock fell by \$0.28 per share, or 14.25%, to close at \$1.73 on April 1, 2024.

55. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's common shares, Plaintiff and the other Class members have suffered significant losses and damages.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

56. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons other than defendants who acquired Harbor Diversified securities publicly traded on the OTC during the Class Period, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, members of the Individual Defendants' immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

57. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, the Company's securities were actively traded on the OTC. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds, if not thousands of members in the proposed Class.

58. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

59. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

60. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether the Exchange Act was violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business and financial condition of the Company;
- whether Defendants' public statements to the investing public during the Class Period omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- whether the Defendants caused the Company to issue false and misleading filings during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false filings;
- whether the prices of the Company's securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

61. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

62. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- the Company's securities met the requirements for listing, and were listed and actively traded on the OTC, an efficient market;
- as a public issuer, the Company filed public reports;
- the Company communicated with public investors via established market communication mechanisms, including through the regular dissemination of press releases via major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services;
- the Company's securities were liquid and traded with moderate to heavy volume during the Class Period; and
- the Company was followed by a number of securities analysts employed by major brokerage firms who wrote reports that were widely distributed and publicly available.

63. Based on the foregoing, the market for the Company securities promptly digested current information regarding the Company from all publicly available sources and reflected such information in the prices of the common units, and Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

64. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information as detailed above.

COUNT I
For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder
Against All Defendants

65. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

66. This Count asserted against Defendants is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

67. During the Class Period, Defendants, individually and in concert, directly or indirectly, disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

68. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- employed devices, schemes and artifices to defraud;
- made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of the Company's securities during the Class Period.

69. Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated, or acquiesced in the issuance or

dissemination of such statements or documents as primary violations of the securities laws. These defendants by virtue of their receipt of information reflecting the true facts of the Company, their control over, and/or receipt and/or modification of the Company's allegedly materially misleading statements, and/or their associations with the Company which made them privy to confidential proprietary information concerning the Company, participated in the fraudulent scheme alleged herein.

70. Individual Defendants, who are or were senior executives and/or directors of the Company, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive Plaintiff and the other members of the Class, or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements made by them or other Company's personnel to members of the investing public, including Plaintiff and the Class.

71. As a result of the foregoing, the market price of the Company's securities was artificially inflated during the Class Period. In ignorance of the falsity of Defendants' statements, Plaintiff and the other members of the Class relied on the statements described above and/or the integrity of the market price of the Company's securities during the Class Period in purchasing the Company's securities at prices that were artificially inflated as a result of Defendants' false and misleading statements.

72. Had Plaintiff and the other members of the Class been aware that the market price of the Company's securities had been artificially and falsely inflated by Defendants' misleading statements and by the material adverse information which Defendants did not disclose, they would not have purchased the Company's securities at the artificially inflated prices that they did, or at all.

73. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the Class have suffered damages in an amount to be established at trial.

74. By reason of the foregoing, Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the plaintiff and the other members of the Class for substantial damages which they suffered in connection with their purchase of the Company's securities during the Class Period.

COUNT II
Violations of Section 20(a) of the Exchange Act
Against the Individual Defendants

75. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

76. During the Class Period, the Individual Defendants participated in the operation and management of the Company, and conducted and participated, directly and indirectly, in the conduct of the Company's business affairs. Because of their senior positions, they knew the adverse non-public information about the Company's business practice.

77. As officers of a public business, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to the Company's financial condition and results of operations, and to correct promptly any public statements issued by the Company which had become materially false or misleading.

78. Because of their positions of control and authority as senior executives and/or directors, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which the Company disseminated in the marketplace during the Class Period concerning the Company's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause the Company to

engage in the wrongful acts complained of herein. The Individual Defendants therefore, were “controlling persons” of the Company within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Company securities.

79. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by the Company.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on behalf of himself and the Class, prays for judgment and relief as follows:

- (a) declaring this action to be a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and designating plaintiff's counsel as Lead Counsel;
- (b) awarding damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, together with interest thereon;
- (c) awarding plaintiff and the Class reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- (d) awarding plaintiff and other members of the Class such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: May 7, 2024

THE ROSEN LAW FIRM, P.A.

/s/ Phillip Kim
Phillip Kim, Esq.
275 Madison Avenue, 40th Floor

New York, New York 10016
Telephone: (212) 686-1060
Fax: (212) 202-3827
Email: pkim@rosenlegal.com

Counsel for Plaintiff